

राजस्व विभाग

युद्ध जागीर

दिनांक 25 अक्टूबर, 1982

क्रमांक 1620-ज(II)-82/37657.—पूर्वों पंजाब युद्ध पुरस्कार अधिनियम, 1948 (जैसा कि उसे हरियाणा राज्य में प्रयोग करते हुए हरियाणा के राज्यपाल श्री रामसरन, पुत्र श्री भूरु, गंव बीबीपुर, तहसील व ज़िला जीद को खी, 1970 से खरीफ 1979 तक 150 रुपये वार्षिक तथा खी, 1980 से 300 रुपये वार्षिक कीमत वाली युद्ध जागीर सनद में दी गई शतां के अनुसार सहर्ष प्रदान करते हैं।

टी. आर. तुली,

अवर सचिव, हरियाणा सरकार,

राजस्व विभाग।

HOME (POLICE) DEPARTMENT

The {22nd October, 1982

No. 2810/SA-2(.)Leave(.).—The Governor of Haryana is pleased to grant 76 days Earned Leave from 17th July, 1982 to 30th September, 1982 under rule 8.116 of the Punjab C. S. R. Vol. I, Part. I to Shri Mulkh Raj, Deputy Superintendent of Police, 4th Bu. Shri Haryana Armed Police, Madhuban, on the expiry of leave, he returned to the same post carrying same pay and allowances, on the forenoon of 1st October, 1982.

M. S. BHATNAGAR

Joint Secretary.

LABOUR DEPARTMENT

The 17th September, 1982

No. 9(1)82-6 Lab./9171.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s. Hindustan Machine Tools Ltd., Pinjore, (Ambala).

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 92 of 1976 (3 12-Fbd. of 1981).

between

SHRI KEWAL KRISHAN SHARMA, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. HINDUSTAN MACHINE TOOLS, LIMITED, PINJORE (AMBALA).

AWARD

This reference No. 92 of 1976 (312-Fbd. of 1981) has been referred to the Labour Court, Rohtak by the Hon'ble Governor of Haryana—vide his order No. ID/AMB//189-12-76/43396, dated 23rd November, 1976; under section 10(i)(c) of the Industrial Disputes Act, 1947 existing between Shri Kewal Krishan Sharma, workman and the respondent management of M/s. Hindustan Machine Tools, Limited, Pinjore, (Ambala) The terms of the reference was:—

Whether the termination of services of Shri Kewal Krishan Sharma was justified and on order ? If no t, to what relief is he entitled ?

The Labour Court, Rohtak, issued the notices to the parties, after receiving this reference. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that the workman joined the services of the respondent on 18th January, 1963, and since then serving the management with honestly and diligently and with hard work upto 1969 and there is no complaint of disobedience, insubordination and misconduct, but in the year 1969 he fell prey to the evil designs of Shri Wazir Singh, who wanted to supply a woman which was against the morality. The refusal on my part became party to design of Shri Wazir Singh. The respondent suspended and gave chargeheet not in conformity with the Standing orders. The

chargesheet was misconceived vague, defective. The charge sheet was received on 9th February, 1970 and reply was required within 24 hours which is violation of principles of natural justice and denial of reasonable opportunity. The enquiry was *mala fide* and due to the personal grudge, vengeance and vindictive attitude of Shri Wazir Singh, whom the workman refused to oblige. There is sufficient evidence on the records to prove this fact. The workman was refused to the reasonable opportunity to defend himself during the enquiry. The enquiry officer and the prosecuting officer both were in collusion with each other and the enquiry was held with the view only to punish the workman. The second charge-sheet was issued on 20th April, 1980 clearly indicate the *mala fide* intention of the management. The incident referred therein is relating to the incident of shopping centre which are not the premises of the factory, so the respondent has no jurisdiction to issue the chargesheet to the workman. The workman was not allowed to cross examine the respondent witnesses and opportunity was denied. The enquiry officer did not discuss the testimony of witnesses in the findings of the enquiry. All the witnesses examined by the management were in one or the other manner related with Shri Wazir Singh, who procured them in order to save himself from the clutches of the management. The material document and the witnesses were not produced by prosecuting officer during the enquiry the complaints lodged by the workman and the supervisors were never produced or shown to the workman. The finding of the enquiry officer was under the influence of the officer and not based on facts or reason. So the workman was terminated illegally and there was no big fault to terminate the workman. So he is entitled for the reinstatement with full back wages and continuity of service.

The case of the respondent according to the written statement is that the allegation against Shri Wazir Singh, Manufacturing Superintendent, now Dy. General Manager, Tractor Division is irresponsible objection which is itself is enough for the workman. There is no basis for such a wild allegation of this has been done with a view to create prejudice against the management and the integrity of its officers. The workman was given the charge-sheet in conformity with the standing orders given to him on 21st January, 1970 and 20th April, 1970 and on this charge-sheet a proper enquiry was held by giving him full opportunity to the workman to produce his evidence and cross-examine the witnesses produced by the management. On the basis of the enquiry report the management passed the proper orders dismissing him from the services. The respondent filed an application under section 33-2(b) before the Learned Industrial Tribunal, Haryana, and the Learned Tribunal accord the approval of the action of the management dated 25th February, 1976 in the enquiry. The workman was allowed to assist Shri Jagrup Singh as observer and both Shri K. K. Sharma and Jagrop Singh signed the proceedings of the enquiry every day. The copies were supplied to them. The enquiry Officer give so many opportunities to the workman by adjourning the enquiry proceedings. The Second charge-sheet dated 20th April, 1970 was not given with *mala fide* intention. The shopping centre is within the boundary walls and premises of the factory and any misbehaviour within the boundary walls of the premises can be taken cognizance by the management. The punishment imposed by the proper authority namely the General Manager and communication of the order has been sent by the Deputy General Manager. The name of Shri Wazir Singh was taken for the first time initially it was Shri Gursewak Singh who was made the target of the workman. So the workman was dismissed after a proper enquiry.

On the pleadings of the parties my predecessor framed one issued as per reference but it was again ordered that the respondent will adduce evidence in respect of vires of the enquiry and legality of the action on 26th July, 1977. The case was transferred to me by the Secretary to Government, Haryana, Labour and Employment, Department, Chandigarh order No. 1(79)80-1Lab., dated 20th October, 1981. My findings on the issues are as under:—

Issue No. 1:—

Issue No. 1 is whether the enquiry conducted against the workman was fair and proper? On this issue the representative of the respondent argued that respondent filed an application under section 33-2(b) of the Industrial Disputes Act before the Industrial Tribunal for the approval of the action taken by the respondent after the enquiry. The whole enquiry was put up before the Industrial Tribunal, Haryana who was pleaded to accord approval of management —*widely* its order, dated 25th February, 1976 the copy of which is filed by the workman which is Ex. WW-1/1. The learned Industrial Tribunal Shri M.L. Jain, Presiding Officer discussed fully well about the enquiry held by the respondent and held that the enquiry is conducted by the enquiry officer was fair and proper. It is correct that the learned Tribunal has only accorded the approval to the management of their action of dismissal of the workman as it was an application under section 33-2(b) of the Industrial Disputes Act. When the learned Industrial Tribunal having the same status has found the domestic enquiry as proper and fair then after holding the enquiry proper by one court it cannot be held improper in the matter of reference. Moreover, the respondent has produced three witnesses Shri J.P. Sharma, MW-1, V.N. Tandon who was the enquiry officer as MW-2 to prove the enquiry before this Court, They corroborated the whole proceedings before the enquiry officer. The enquiry officer proved the proceeding of the enquiry Ex. M-6 and deposed that he held the enquiry into the charge-sheet Ex. M-1 and M-2 against the workman. After the explanation Ex. M-3 and M-4 found unsatisfactory by the management he was appointed —*widely* order Ex. M-5. The enquiry officer stated that he gave full opportunity to the workman to take part in the enquiry, cross-examine the witnesses of the management and adduce his defence witnesses and that he supplied the copies of the enquiry which were taken by the workman under his signature. He also proved the report relating to the findings of the enquiry Ex. M-7 as correct. The respondent representative argued that the representative of the workman brought nothing in the cross examination of these witnesses. No suggestion was made to him in cross-examination in respect of any irregularity and illegality for vitiating the enquiry. The enquiry officer has stated categorically in his statement that he dealt with each one of

letter, dated 30th July, 1970, 4th October, 1970, 18th November, 1970, 7th June, 1971 and 7th and 9th July, 1971, which Ex.W-1 to W-6. The representative of the management cited the Supreme Court Judgement in 24 FJR, Page 406, where in the Supreme Court has held:—

"Once the Industrial Tribunal had held that enquiry was fair and proper, the same question could not be gone into against when a reference is made under section 10. The reasons behind this conclusion was that if the enquiry was not fair and proper the Tribunal would not have accorded approval and the workman would have been in employment."

The representative of the management argued that as decided by the learned Tribunal the enquiry was fair and proper by the respondent.

The representative of the workman argued on this issue that there is no pleadings of the respondent that the question of enquiry has already been decided and there is no scope of this issue. Under section 33-2(b) the learned Tribunal has limited powers whereas this court has wide power under section 10 of the I.D. Act to discuss the enquiry. The respondent issued vague charges against the workman and given no opportunity to explain his position properly well as the time given in the letter was 24 hours to give the explanation. The workman was not knowing the English and the enquiry was conducted in English and not in Hindi. The workman raised objection for not allowing question in the enquiry. The Second charge-sheet dated 20th April, 1976 was irrelevant as the incident occurred at Shopping centre and not in the factory and the respondent has no jurisdiction to chargesheet o the incident occurred out side the premises. He argued that as stated by the workman as WW-1 that he was working in the respondent factory from 18th January, 1963 as Driller and was terminated on 19th April, 1974 and in this period there was no complaint against the workman of any kind. He received a letter signed by Shri Wazir Singh, dated 27th January, 1970 which is Ex. W-1 and after that letter he received the charge-sheet dated 6th February, 1970 which was signed by Shri Wazir Singh. He replied the charge-sheet Ex. M-3. He also received a letter from the respondent which is Ex. W-3. The enquiry held against the workman was not proper as it was conducted in English and not in Hindi which was objected by the workman but his objection was overruled. The workman was not supplied the complaint against him before the start of the enquiry copies of the findings were not given to the workman. The workman has further stated that he wrote a letter to the various authorities in this respect which are Ex. W-4 to W-5 from time to time. The postal receipt are Ex. W-13 to 39 and Ex. W-40 is the copy of the statement submitted by him before the Industrial Tribunal for the approval case. So the enquiry officer failed to conduct the fair and proper enquiry against the workman and did not reply the objections raised by the workman for the enquiry proceedings. After going through the objection no body could say that enquiry was fair and proper. So the workman was denied the opportunity on every time in the enquiry and the enquiry was not proper and may be vitiated.

After hearing the arguments of both the parties and going through the file, I am of the view that citation made by the respondent has some force and I agree with the respondent in this respect so I hold that the enquiry conducted by the respondent was fair and proper and the issue is decided in favour of the respondent and against the workman.

Issue No. 2:—

Issue No. 2 is as per reference. In this respect the representative of the respondent argued that when the Presiding Officer of the learned Industrial Tribunal, Haryana has approved the case of the workman then the learned Court cannot go beyond this fact. Under section 10-A of the I.D. Act the learned Court can go in the evidence led by both the parties in the enquiry and can differ from the enquiry officer in the findings of the fact, but there is no inconfirmity in the evidence. The respondent witnesses have pleaded the case of the respondent very heavily and there no chance to go against this evidence under section 11-A of the Industrial Disputes Act and the findings given by the enquiry officer cannot differ on the evidence of the parties in the enquiry proceedings. So the termination after the enquiry was proper and justified as there was serious charges of misconduct against the workman which were proved by the prosecution witnesses in the enquiry and the enquiry officer after going through the whole evidence before him found the workman guilty of the charges. So the evidence given by the enquiry officer are correct and can not be reverted in any way.

The representative of the workman argued on this issue that the findings of the enquiry officer cannot be held good in presence of the evidence in the enquiry. The enquiry officer has given no weight to the evidence of the workman. The workman has produced 12 witnesses to defend his case and all the witnesses has supported the contention of the workman. Among these witnesses there are independent person who cannot be dis-believed, and they are some outsider and other co-workmen of the workman who could also not be dis-believed. The respondent has produced only 5 witnesses all are high officers. It was simply to save the position of Shri Wazir Singh Manufacturing Superintendent. These witnesses are some what realeated to Shri Wazir Singh the min target of the workman. He farther argued that in the findings of the enquiry officer has held that the suspension of the workman on charge No. 1 cannot be sustained and charge 2 he has also given the findings in favour of the workman stated that in respect of charge No. 2 that suspicion of this charge can not be sustained. There five charges against the workman. The first charge is absent from duty from 10.00 a.m. to 12.00 noon on 2nd January, 1970, (2) Neglected the work on 22nd January, 1970, (3) Abusing the Deputy Manager on 23rd February, 1970, (4) Abusing co-workmen on 24th January, 1970; (5) Warning for improving work on 21st January, 1970;

(6) Improving the work; (7) Assaulting Shri Gursewak Singh, Deputy Manager on 13th April, 1970. The main charge of misconduct is of absent and assault of the Superior officers and improvement of work. He further argued that the workman joined the factory as he has stated in his statement as WW-I on 17th January, 1968 and from that date upto the date of 20th January, 1970 there is no such allegation upon the workman. He was working properly and behaving properly with his officers and colleagues. The matter started from January, 1970. If the workman was habitual of not working properly and misbehaving his officer and colleagues it would have from the beginning and not at the sudden after so many years. The workman was charged intentionally and the charges were frivolous. The enquiry officer has not found guilty of the charges of I, II in the enquiry report. About the assault and abusing the statement of his co-workman cannot be disbelieved. The enquiry officer did not weight to the evidence of the workman. He has only discussed and appreciated the evidence of the respondent and did not appreciated the evidence produced by the workman in his defence. On charge No. 7 in which it is alleged that Shri Gursewak Singh, Deputy Manager was assaulted on 13th April, 1970. The workman called Dr. K.P. Khanna, Medical Officer, Ambala who has stated in his statement that he examined the workman on 13th April, 1970 at about 2.00 p.m. and he has injuries on his body. The workman has stated in his statement that Shri Gursewak Singh, Deputy Manager gave a bottle blow on his head, he became unconscious and he was taken to the hospital. To prove this fact the workman called the Doctor in his defence and the enquiry officer did not appreciated or believed the evidence of the doctor and belived the evidence of the respondent. The workman also produced one Shri Amarjit Singh, Advocate, Patiala and produced his co-workman in his defence which cannot be dis-believed. On the other hand the respondent has produced only officers for their evidence. The could not find the single workman in the factory to give the evidence against the workman because the charges were false and frivolous. He further argued that the enquiry officer has not fully discussed the evidence given by the witnesses. So the findings of the enquiry officer was under the influence of the respondent management. He further argued that there is no such previous allegations against the workman and these all allegations were made due to some misunderstanding of the officers who want to punish the workman. The workman is punished without any fault and a very heavy punishment is given even in respect of the allegations. The disproportionate punishment be reviewed in accordance with the evidence of the witnesses before the enquiry officer.

After hearing the arguments of both the parties, and going through the file, I am of the view that the enquiry officer has wholly disbelieved the witnesses of the workman and did not appreciated the statement of defence witnesses. I agree with the argument put forwarded by the respondent of the workman. There is no previous punishment of the workman in respect of any allegations. So it is evident that these allegations were framed due to some misunderstanding between the officer and the workman and the workman was given a disproportionate punishment for removing him from the job. The workman could be warned of these allegations because he was an old employee of the factory and there is no workman came forward to give evidence against this workman. In these circumstances, the termination is not justified and the workman is entitled for his reinstatement with continuity of service but not with full back wages because the reference is prolonged due to adjournments taken by the workman. The reference came in the court on 25th November, 1976 and only for two issues it took six years and most of them due to workman's fault, So the workman is entitled for reinstatement with continuity of service but he is not entitled for any back wages.

This be read in answer to this reference.

Dated the 25th August, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana, Faridabad.

Endstt. No. 1940, dated 1st September, 1952.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana, Faridabad.

H.L. GUGNANI,

Commissioner and Secretary to Government, Haryana,
Labour and Employment Departments.